SUPREME COURT, U. S.

1 8 1974

MICHAEL RODAK, JR., CLERK

In the

Supreme Court of the United States

JANUARY TERM, 1974

No. 73-1073

Francis J. Warin, Individual, etc.,
Appellant-Petitioner

v.

The Director, Alcohol, Tobacco and Firearms Division
Internal Revenue Service
Appellee-Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Francis J. Warin
(in person, without counsel)
9720 West Hollywood
Oak Harbor, Ohio 43449
(419) 897-1147

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Francis J. Warin, Petitioner, prays that a Writ of Certiorari issue to review the opinion, judgment and order denying rehearing of the United States Court of Appeals for the Sixth Circuit in the subject case.

CITATION TO OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is hereby included in the Appendix (case no. 73-1460). The Order of the United States Court of Appeals for the Sixth Circuit denying Petitioner's Motion for Rehearing En Banc, and the decision of the District Court (case no. C72-324) are also included in the Appendix.

JURISDICTION

The opinion of the United States Circuit Court of Appeals was rendered on September 26, 1973. Rehearing was denied November 1, 1973. The jurisdiction of this Court is invoked under 28 USC § 1252.

QUESTION PRESENTED

A) Whether the Second Amendment of the Bill of Rights refers to a personal right of the American Citizens to keep and Bear Arms.

B) Whether Congress can levy a tax on the exercise of said right (Title 26, I.R.C., Part 179, § 179.61).

C) Whether an American citizen, without being engaged in the business of dealing in "arms", has the right to pursue his advocation and to freely engage in the research and development of "arms", military or otherwise, and to collect such "arms" which provide him with the informations necessary to his research (Title 18, U.S.C. Title II, Section 5841).

D) Whether an American citizen has a right to assemble prototypes of any "arms" subject to his research. (Title 18, U.S.C. Title II, Sections 5821-2).

E) Whether an American citizen has a right to privacy in the exchange of information and related "arms", for legal purposes, with other citizens sharing his interest.

F) Whether an American citizen has the right to move interstate, for legal purposes, with his property, namely the "arms" he possesses, without harassment from federal authorities. (Title 26, I.R.C., Part 178, § 178.28-29).

STATUTES INVOLVED

Title 18, U.S.C., Chapter 44; Title 26 I.R.C., Chapter 53, Part 178 and 179 and Appendix B (refered to as the Gun Control Act of 1968) and Title VII of the Omnibus Crime Control of 1968.

STATEMENT OF THE CASE

The Petitioner, Francis J. Warin, age 42, came to this country in 1961, was naturalized in 1966. He is a mechanical engineer by trade and a gun designer by advocation. Petitioner is presently employed in such capacity by ARES Inc. of Port Clinton, Ohio, which is recipient of an Army contract for the manufacture and trial of a prototype of an automatic cannon.

From almost the very first day of his arrival in this country, Petitioner has tried to enter the arm designing field. The only opening so far has been employment by established arm manufacturers under the following general rule: everything an employee can invent, create, or figure, which is pertinent to arm designing, is company's property without compensation. (See Appendix "A")

The Petitioner tried to engage in the design and assembly of prototypes of military weapons on a personal basis only to run into a maze of federal and state legislations, many of them contradictory, and involving heavy taxation. The Petitioner then decided to test the constitutionality of the Act in Court.

MEANING OF TERMS

Arms: As defined by the "Termes de la Ley" (1641 at P. 51): "Arms in the Understanding of the Law, is extended to Any Thing that a Man, in his Anger or Fury, takes into his Hands to cast at or strike another" –

As defined by the Oxford Dictionary, arms are "defensive and offensive outfit for war, things used in fighting" –

As defined by the Webster Dictionary, arms are "instruments or weapons of offense or defense."

To infringe: to destroy, to impair, to encroach.

REASONS FOR GRANTING THE WRIT

Although the fear that a standing army would become a "grand machine of power and aggression" raised to tempt an ambitious man who had dictatorial designs was a dominant note in the Convention, it is beyond reasonable doubt that the delegates considered the right to keep and bear arms a personal right. Pennsylvania's proposition to the Bill of Rights read:

> "That the people have a right to bear arms for the defense of themselves, their State, or the United States, and for killing game, and no law shall be enacted for disarming the people except for crimes committed or in a case of real danger of public injury from individual . . ."

New Hampshire's third article was even more to the point:

> "That Congress shall never disarm any citizen except such as are or have been in actual rebellion."

Samuel Adam's proposal, as an amendment to the Constitution was:

> "And that the said Constitution be never construed to authorize Congress . . . to prevent the people of the United States, who are peacable citizens, from keeping their own arms . . ."

The Framers felt that the militia would be necessary but not sufficient to guarantee the continued existence of our free nation and that aspects and facets of keeping arms other than for the well regulated militia were required in order to have a sufficient bulwark for the liberty and security of a free people. James Madison made this clear when he wrote:

> "Besides the advantage of being armed, which the Americans possess over the people of almost every other nation, the existence of subordinate governments, to which the people are attached and by which the militia officers are appointed, forms a barrier against the enterprises of ambition, more insurmountable than any which a simple government of any form can admit of. Notwithstanding the military establishments in the several kingdoms of Europe, which are carried as far as the public resources will bear, the governments are afraid to trust the people with arms. And it is not certain that with aid alone they would not be able to shake off their yokes." (The Federalist, No. 46, J.E. Cook Edition, p. 321-2, Wesleyan Univ. Press, 1961).

Lenoir, of North Carolina, shared these views.

> "When we consider the great powers of Congress, there is great cause of alarm. They can

> disarm the militia. If they (the citizens) were armed, they would be a resource against great oppressions. The laws of a great empire are difficult to be executed. If the laws of the Union were oppressive, they could not carry them into effect, if the people were possessed of proper means of defense." (Elliot: Debates on the Constitution, p. 203).

Even the provision that "no person religiously scrupulous shall be compelled to bear arms" submitted along with the original proposition for what was to become the Second Amendment was vigorously (and ultimately successfully) opposed by no less a personnage than Elbridge Gerry:

> "Mr. Gerry – This declaration of rights, I take it, is intended to secure the people against the mal-administration of the Government; if we could suppose that, in all cases, the rights of the people would be attended to, the (necessity) for guards of this kind would be removed. Now I am apprehensive, sir, that this clause would give an opportunity for the people in power to destroy the Constitution itself. They can declare who are those religiously scrupulous and prevent them from bearing arms" (Thomas Lloyd, Debates of Congress, Vol. 2, p. 219).

In 1833, the right of the citizen to keep and bear arms still appeared to Justice Story as

> ". . . the palladium of the liberties of a republic; since it offers a strong moral check against the usurpation and arbitrary power of rulers; and will generally, even if these are successful in the first instance, enable the people to resist and

triumph over them . . ." (J. Story, Commentaries on the Constitution, § 1890, p. 746-7).

In Cooley's "Constitutional limitations" at p. 253, we find that:

> "Among the other safeguards to liberty should be mentioned the right of the people to keep and bear arms."

A statement of a more general nature appears in Learned Hand's "Bill of Rights" at p. 31.

> "My topic being the Bill of Rights, by which, as I have said, I mean the first eight and the fourteenth amendments, I am not concerned with those decisions that have marked the division between the powers of the nation and of the states, for the Bill of Rights is concerned only with the *protection of the individual* against the impact of federal or state law." (Emphasis added).
>
> "(The purpose of the Bill of Rights) is to withdraw certain subjects from the vicissitudes of political controversy, *to place them beyond the reach of majorities and officials* and to establish them as legal principles to be applied by the Courts." (Board of Education vs. Barnette, 319 US 624. Emphasis added).
>
> "The first ten Amendments were proposed and adopted largely because of fear that Government, and not only Federal Government, might unduly interfere with prized individual liberties." (Justice Black, dissenting, in Adamson vs. California, 332 US 46).

> ". . . the closest the Framers came to the *affirmative* side of liberty was in the "right of the people to bear arms" (Justice William O. Douglas, "The Bill of Rights" in 38 N.Y. Univ. Law Rev. 207, 233; emphasis in original).

The First Amendment of the Constitution which guarantees *"the right of the people* peaceably to assemble and to petition the Government for a redress of Grievance" (emphasis added) has been considered a personal right, a "preserve where the views of the individual are made inviolate" (Schneider vs. Smith 390 U.S. 17, 25). *"The right of the people* to be secure in their persons, homes, papers and effects . . . (Fourth Amendment - Emphasis added) has been construed as a personal right (Mapp vs. Ohio 367 US 643). Coupled with the decision of this Court in Ullman vs. U.S. (350 US 422) that "as no constitutional guarantee enjoys preference, so none should suffer subordination or deletion," it necessarily results that *"the right of the people* to keep and bear Arms" (Second Amendment - emphasis added) is a personal right which cannot be destroyed, impaired or encroached upon in any manner.

The right of the people to keep and bear arms has, in fact, considered a personal right by several of the States Supreme Courts (see Appendix B). As such, it is beyond the powers of Congress to tax it, whatever the motive. (To wit Murdock vs. Pennsylvania 319 US 105, U.S. v. Darby 312 US 100 at 113, 115).

To lay a tax on the manufacture of "arms" for lawful purposes, such as experimentation by persons not dealing in "arms", i.e., engaged in a business occupying time, attention and labor for the purpose of livehood or profit, is also unconstitutional as in violation of the fourteenth Amendment:

> "The liberty mentioned in the (fourteenth) Amendment means not only the right of a citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will, to earn his livehood by any lawful calling; *to pursue any livehood or advocation,* and for that purpose, to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purpose above mentioned." (Allgeyer v. Louisiana, 165 US 578. Emphasis added).

The above mentioned tax is in violation of the fourteenth Amendment in the sense that it creates a "class legislation," discriminating against some and favoring others, since a citizen who is designing a new "arm" which is not of a military character can do so without hindrance.

The above mentioned tax is also unconstitutional as in violation of Article I, Section 8, § 3 of the Constitution: "No bill of attainder or ex post facto law shall be passed."

In the Test Oath Case, the Supreme Court held that to bar a person from his profession was punishment. The grounds for disqualification were found irrelevant to the fitness of the individuals to carry on their profession. And since it provided for punishment, the law was considered to be "criminal" within the meaning of the ex post facto and bill of attainder clauses.

In Fletcher vs. Peck (6 Cranch 87) the Supreme Court held that the bill of attainder clause was to be read in the

light of the evil the Framers had sought to bar: legislative punishment, of any form of severity, of specifically designated persons or groups.

The above mentioned tax is in violation of the Article I, Section 8, § 1 of the Constitution: "The Congress shall have power to lay and collect Taxes . . . (to) provide for the common Defense . . ." It is logical then to assume that Congress has no power to lay taxes which would deter a citizen from participating to the common defense. Any new design or improvement over a military weapon does contribute to the common defense and any taxation on this activity will promptly curtail it.

Finally, the making of an "arm," by somebody other than a licensed manufacturer, cannot fall under the jurisdiction of Congress as commerce, even if the maker intends to sell or transport said "arm" outside of his state at a later date. (Carter vs. Carter Coal Co., 298 US 38).

> "The right of a citizen of the United States resident in one state to contract in another may be a liberty safeguarded by the due process of law clause and, at the same time, nonetheless, a privilege protected by the privileges and immunities clause of the fourteenth Amendment. In such case he may invoke either or both." (Colgage v. Harvey, 296 US 404).

> "The mere fact that a citizen may be within the limits of a particular state does not prevent his making a contact outside its limits while he himself remains within it." (Allgeyer v. Louisiana, Supra).

Considering now Question "E" of this brief, the Supreme Court of our nation has recnetly voided the abortion laws

of the several states, in a landmark case, *Roe v. Wade*, 410 US 113. This case was based upon the Ninth Amendment's right of Privacy* of the individual, rather than any specific right enumerated in the Bill of Rights. And in *Griswold v. Connecticut*, the Supreme Court held that the Ninth Amendment, when combined with the First Amendment (right of association), the Third Amendment (quartering of soldiers), Fourth Amendment (searches and seizures) and Fifth Amendment (self-incrimination and due process), all added up to the right of the people to privacy. In addition, the right of privacy extended to a physician's giving of an abortion to his patient. *Doe v. Bolton* 410 US 179. Thus, the plaintiff in the case at bar has even more standing to complain of invasion of his right of privacy than in the *Bolton* case, 410 US at 188, where the physician also had not been arrested but nevertheless was found to have standing to complain of invasion of privacy with regard to a *non*-specifically guaranteed right. By contrast in the case at bar, the plaintiff is complaining of invasions into his privacy in the exercise of his federally protected right to keep (obtain) arms pursuant to the Second Amendment, a *specifically* guaranteed right.

Moreover, plaintiff has a stronger case that the physician in *Griswold v. Connecticut*, who successfully challenged the statute forbidding a physician from giving abortion advice and performing abortions. That case was based explicitly upon the panoply of rights under the combination of the First, Third, Fourth, Fifth and Ninth Amendments as applied to non-specifically guaranteed federal rights of privacy. *Griswold, supra*, 381 US 479, 484 - 5. For the right to an abortion is not even mentioned anywhere in the Constitution, but the right to keep (obtain)

*Ninth Amendment: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

arms indeed is specifically guaranteed in the Second Amendment. Thus, plaintiff herein has a much stronger case than *Griswold, supra,* for a declaration of the unconstitutionality of the Gun Control Act's record-keeping and inspection provisions. These provisions effectively put the government's agents, armed with their copying equipment and their computers, directly looking over the shoulders of the plaintiff whenever he attempts to purchase arms – a federally protected right under the Second Amendment.

As discussed herein-above, the Second Amendment is as strongly a personal individual right of the citizen as the First Amendment, and yet it has been squarely held that the First Amendment (even without the Ninth Amendment) guarantees the right to publish handbills anonymously. *Talley v. California,* 362 US 60. And certainly the central government could not constitutionally require the registration of readers of newspapers or magazines as they purchase these items on the newsstands. Cf. *N.A.A.C.P. v. Alabama,* 357 US 449, holding that the State of Alabama could not inspect the membership list of the N.A.A.C.P.

Considering question "F" of this brief, the Gun Control Act of 1968 is unconstitutional as in violation of the thirteenth Amendment, Section 1, of the Constitution: "Neither slavery *nor involuntary servitude* . . . shall exist within the United States . . ." (Emphasis added). The Supreme Court defined servitude as "a state of compulsory subjection to a master" (Hodges v. U.S. 203 US 1).

> ". . . personal servitude is the subjection of one person to another . . ., it consists simply in the right of requiring of another what he is bound to do or not to do." (Shilling v. State 143 Miss. 709).

"Servitudes are burdens on property." (St. Louis Savings Bank v. Kenneth's Estate, 101 Mo. App. 370, 74 S.W. 474).

In the case at bar, the claim of violation of the thirteenth Amendment would be without merit if, after having paid the tax and registered his "arm," the transferee was free to move interstate with his property. Such is not the Case. (Title 26 I.R.C., Chapter 1, § 178.28).

CONCLUSION

Petitioner prays for oral argument of the case. This privilege was consistently denied by the courts below, despite the fact that Petitioner has been deprived of property, without due process of law (Case No. Ohio S-3360 T-I/II, July 19, 1969). The weapon was confiscated upon admission, by Petitioner, that he could provide, at a later date, the matching attaching iron. There was no actual sale. The contention that the weapon was contraband is without merit, since the incriminating part was not for sale with the weapon; it would also imply that Congress has a right to tax a specifically guaranteed personal right.

Petitioner must point out to this Court that the decisions handed down have no relation to the case at bar, to the extent that Petitioner had to commit an act of civil disobedience in the hope to be heard. (See Appendix "C")

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

FRANCIS J. WARIN
in person, without counsel

CERTIFICATE OF SERVICE

It is hereby certified that copies of the foregoing brief were served by mailing in the U.S. Mail, postage prepaid, to the United States Court of Appeals for the Sixth Circuit, Cincinnati, O., the United States Attorney, District Courthouse, Toledo, O. and the Sollicitor General, Dept. of Justice, Washington, D.C.

FRANCIS J. WARIN

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Francis J. Warin, Individual, etc., *Plaintiff,*	)	
vs.	)	Civil No. C 72-324
Director, Alcohol, Tobbaco, & Firearms Division, Internal Revenue Service *Defendant.*	)	**ORDER**

This cause came to be heard upon motion of the defendant for summary judgment. Rule 56, Fed. R. Civ. P. For the reasons stated in the accompanying opinion, good cause appearing, it is

ORDERED that the motion of the defendant for summary judgment should be and hereby is granted, and it is

FURTHER ORDERED that the Clerk shall enter judgment in favor of the defendant.

/s/ J. Young
United States District Judge

Toledo, Ohio

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Francis J. Warin, *Plaintiff,*	)	
vs.	)	Civil No. C 72-324
Director, Alcohol, Tobbaco, & Firearms Division, Internal Revenue Service, *Defendant.*	)	**OPINION**

YOUNG, J:

This cause came to be heard upon motion of the defendant for summary judgment. Rule 56, Fed. R. Civ. P.

Plaintiff brings this action individually and as a class of persons seeking to have the Gun Control Act of 1968, 18 U.S.C. §921 *et seq.*, 26 U.S.C. §5801 *et seq.* (referred to as the National Firearms Act) and the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. Appx. §1201 *et seq.* declared unconstitutional. This action is brought under the Declaratory Judgment Act, 28 U.S.C. §2201. The Court is aware that plaintiff faces considerable problems in bringing this action in a federal district court in light of the "case and controversy" requirements of Article III of the United States Constitution. However, the plaintiff's memoranda in opposition to the defendant's motion are sufficient to indicate that there could well be a factual dispute on the issue of standing which would make it improper to rule upon this issue as a matter of law. The Court will therefore proceed to consider the question of

the constitutionality of the statutes in question, which plaintiff has argued at stupefying length in a memorandum attached to his compalint.

The National Firearms Act since its amendment by the Gun Control Act of 1968 has not been found to violate the Second Amendment. *See United States v. Tomlin*, 454 F. 2d 176 (9th Cir. 1972); *United States v. McCutchson*, 446 F. 2d 133 (7th Cir. 1971); *United States v. Williams*, 446 F. 2d 486 (5th Cir. 1971). This Act has also withstood a Fifth Amendment attack. *United States v. Weiler*, 458 F. 2d 474 (3rd Cir. 1972). The record keeping requirements of the Act were not found to be unconstitutional due to vagueness. *United States v. Decker*, 446 F. 2d 164 (8th Cir. 1971). The Act has also been tested as an invalid exercise of the taxing power of Congress and did not fail. *United States v. Ross*, 458 F. 2d 1114 (5th Cir. 1972); *United States v. Giannini*, 455 F. 2d 147 (9th Cir. 1972); *United States v. Matthews*, 438 F. 2d 715 (5th Cir. 1971); *United States v. Palmer*, 435 F. 2d 653 (1st Cir. 1970).

Other provisions of the Gun Control Act, 18 U.S.C. §921 *et seq.* have also been challenged as unconstitutional under the Second Amendment and emerged unscathed. *United States v. Gross*, 451 F. 2d 1355 (7th Cir. 1971); *United States v. Williams*, 446 F. 2d 486 (5th Cir. 1971); *United States v. Decker, supra.*

The courts found the Gun Control Act to be a valid exercise of Congress's Commerce Power whether the transacted firearms be in intrastate or interstate commerce. *United States v. Crandall*, 453 F. 2d 1216 (1st Cir. 1972); *United States v. Menna*, 451 F. 2d 982 (9th Cir. 1971); *United States v. Wilson*, 440 F. 2d 1068 (6th Cir. 1971).

The Omnibus Crime Control and Safe Streets Act of 1968 has not been found to be unconstitutional relating to receipt, possession, or transportation of firearms in commerce or affecting commerce by felons and other proscribed categories of persons. *United States v. Stevens,* 440 F. 2d 144 (6th Cir. 1971); *United States v. Synnes,* 438 F. 2d 764 (8th Cir. 1971); *United States v. Cabbler,* 429 F. 2d 577 (4th Cir. 1970), *cert. denied,* 400 U.S. 901 (1970).

Finally, the United States Supreme Court has had the opportunity to pass on the constitutionality of the Acts in question and found them to be constitutional. *United States v. Freed,* 401 U.S. 601 (1971). Its language in a recent decision gives clear indication why the Acts should not be declared unconstitutional.

> (C)lose scrutiny of this (firearms) traffic is undeniably of contral importance to federal efforts to prevent violent crime and to assist the States in regulating the firearms traffic within their borders. See Congressional Findings and Declaration, Note preceding 18 U.S.C. Sec. 922. Large interests are at stake, and inspection is a crucial part of the regulatory scheme, since it assures that weapons are distributed through regular channels and in a traceable manner and makes possible the prevention of sales to undesirable customers and the detection of the origin of particular firearms. *United States v. Biswell,* 406 U.S. 311, 315-16 (1972).

The plaintiff in his brief in opposition to defendant's motion makes reference also to Section 8, paragraph 1 and Section g, paragraph 2 of the Constitution. These are not meaningful citations, as the Constitution is not thus divided. It may be that plaintiff intends by these citations

to refer to the provisions dealing with the militia in Section VIII of Article I and Section II of Article II of the Constitution, judging by the remarks on page 23 of the brief attached to his complaint, although there again he uses his own peculiar method of citation. Be all that as it may, these sections add nothing to plaintiff's arguments concerning the Second Amendment. The decisions of the Supreme Court and other courts foreclose this Court from following plaintiff's arguments.

This Court is left with no alternative but to dismiss plaintiff's action since every constitutional challenge he raises against the Acts has already been presented and argued to a federal court in one form or another and held to be unjustified.

An order will be entered in accordance with this opinion.

/s/ J. Young
United States District Judge

Toledo, Ohio.

No. 73-1460

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANCIS J. WARIN, *Plaintiff-Appellant,*	)	
v.	)	
DIRECTOR, ALCOHOL, TOBACCO and FIREARMS DIVISION, INTERNAL REVENUE SERVICE *Defendant-Appellee.*	)	**ORDER**

Before: CELEBREZZE, PECK and McCREE, Circuit Judges

CELEBREZZE, Circuit Judge. This case is before the Court on a motion to affirm pursuant to Rule 8 of the Rules of this Court. Appellant has appealed from the District Court's granting of Appellee's motion for summary judgment. Appellant sought to have the Gun Control Act of 1968, 18 U.S.C. §921 *et seq.*, 26 U.S.C. §5801 *et seq.*, and the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. Appx. §1201 *et seq.*, declared unconstitutional as violative of the Second, Fourth, Fifth and Thirteenth Amendments and the Commerce Clause of the Constitution. The questions raised concerning the constitutionality of these Acts have been considered on many occasions by various Courts. In its opinion of March 27, 1973, the District Court provided ample authority for the denial of each of Appellant's constitutional claims. Having considered the arguments of the parties and the opinion of the District Court, the Court is of the opinion that the questions on which the decision of this case depends are so

unsubstantial as not to need further argument. Therefore, it is ORDERED that Appellee's motion to affirm be and it is hereby granted.

Entered by order of the Court.

No. 73-1460

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANCIS J. WARIN, Individual, etc., *Appellant,*	)	
v.	)	
DIRECTOR, ALCOHOL, TOBACCO & FIREARMS DIVISION, INTERNAL REVENUE SERVICE *Appellee.*	)	**ORDER**

Before: CELEBREZZE, PECK and McCREE, Circuit Judges

Appellant having filed a petition for rehearing with this Court, and this Court having considered said petition and being duly advised in the premises,

It is ORDERED that the petition for rehearing be, and it is hereby denied.

ENTERED BY ORDER OF THE COURT

APPENDIX A

Name: Francis J. Warin Master No. OF-31188

TRW, Inc.
Employee Invention and
Confidential Information Agreement

In consideration of my employment by TRW, Inc., an Ohio corporation, and/or by any other company which it owns or controls or their successors in business (any one or more of which companies so employing me shall be herein referred to as the "Employer") during such time as may be mutually agreeable to the Employer and myself, and in consideration of the compensation paid to me for working for the Employer, I hereby assign and agree to assign to TRW, Inc. the following described inventions whether patentable or not:

1. All my rights to inventions which, during the period of my employment by the Employer, I have made or conceived or may hereafter make or conceive, either solely or jointly with others, within the existing or contemplated scope of the Employer's business or relating to any subject matter with which my work for the Employer is or may be concerned.

2. All my rights to inventions which, during the period of my employment by the Employer, I have made or conceived, or may hereafter make or conceive, either solely or jointly with others, with the use of the Employer's time, material or facilities.

3. All my rights to inventions which, during the period of my employment by the Employer, I have made or conceived, or may hereafter make or conceive, either solely or jointly with others, relating to machines, processes, devices, compositions of matter, or ornamental designs for articles of manufacture, now made, used or sold by the Employer, or which the Employer may hereafter, during the period of my employment, make, use or sell.

4. All my rights to inventions which have been incorporated or utilized, or which may hereafter be incorporated or utilized, by the Employer, in the manufacture, use or sale of machines, devices, compositions of matter, processes, or ornamental designs for articles of manufacture, during the period of my employment by the Employer.

5. All my rights to unpatented inventions which I now own, except those listed below as not being included in this Agreement.

I further agree that I will promptly disclose in writing to the Employer, through the Employer's officers or their designees, each and every invention made or conceived by me either as an individual or jointly with others, during the period of my employment.

I further agree, either during or after my employment and without charge to Employer, to execute, acknowledge, and deliver all such further documents, including applications for Letters Patent, as may be necessary or in the opinion of the Employer advisable to obtain Letters Patent for said inventions in the United States and in any other

country, and to vest title thereto in TRW, Inc. and its successors, assigns, and/or designees.

I further agree that any invention which I may disclose to any one within six (6) months after the termination of my employment, or for which I may file application for Letters Patent within six (6) months after the termination of my employment, shall be presumed to have been made during my period of employment hereunder; except that if I in fact conceive and make any such invention after the termination of my employment with the Employer, then such invention shall belong to me and shall be my sole property or the property of my assignee. I assume the responsibility of proving that I conceived and made any such invention after the termination of my employment.

I also agree not to disclose to any outside party either during or after my employment nor to use after my employment, without the Employer's written consent, any information, knowledge or data of Employer's or of third parties' obtained by me during my employment relating to formulas, methods, machines, compositions, inventions, developments, improvements or otherwise which is or is treated as Employer or third party private, trade secret, or proprietary, and I agree to hold all such information, knowledge and data in strict confidence.

I also agree upon leaving the employment of the Employer not to take with me any of Employer's property including but not limited to blueprints, drawings, sketches, notebooks, formulas and documents.

I also agree that after my employment, Employer may notify any one thereafter employing me of the existence and provisions of this Agreement.

I agree to comply and do all things necessary for Employer to comply with provisions of contracts between agencies of the U.S.A. Government or their contractors and Employer which relate to Invention Rights or to the safeguarding of information pertaining to the defense of the United States of America.

The provisions of this contract shall be construed as severable.

It is understood and I agree that the term "period of my employment" used in this Agreement shall be the entire time in which I am in the employ of the Employer including such time prior to the date of this Agreement.

As a matter of record, I have given below a complete list of all unpatented inventions, including a description thereof, which I now own and which are not to be included in this Agreement, and I covenant that this list is complete.

WITNESS my hand and seal this 13th day of March, 1970.

WITNESS

/s/ L. G. Snow

/s/ Francis J. Warin

Employee

APPENDIX B

State Court Decisions

State v. Reid (1 Ala 612)

State v. Buzzard (4 Ark. 18, in totto)

Wilson v. State (33 Ark. 557)

Haile v. State (38 Ark 564)

Nunn v. State (1 Ga 243, in totto)

Stockdale v. Georgia (32 Ga 225 at 227)

Hill v. Georgia (53 Ga 473, in totto)

Bliss v. Commonwealth (2 Litt. 90, Ky, in totto)

State v. Smith (11 La. Ann. 633 at 634)

State v. Kerner (181 N.C. 574, in totto)

People, ex rel Darling v. Warden (139 N.Y. Supp. 277)

State V. Hogan (63 Ohio St. 202 at 218)

State v. Nieto (101 Ohio St. 409 in totto)

Walter v. Ohio (3 Ohio Nisi Prius Reporter 13 at 14-15, 4 Ohio Decisions 41)

Abbeville v. Leopard (61 S.C. 99)

Aymette v. State (11 Tenn. 154 at 158-9)

Andrews v. the State (50 Tenn. 165 at 168-9)

Jennings v. State (5 Tex App. 298, in totto)

APPENDIX C

Dear Sirs:

This is to bring to your attention that I am in the process of fabricating and assembling prototypes of full automatic weapons of my own design. They will be of different calibers and for different purposes, and, if successful, will be submitted in time to the U.S. Armed Forces for examination and trial.

By virtue of the United States Constitution, Article I, Section 8, Paragraph I, and Section 9, Paragraph 3, and the Bill of Rights, Amendments 2, 4, 5, 13 and 14, and as explained in my memorandums C-72 324 to the U.S. District Court of Toledo, Ohio and 73-1460 to the U.S. Court of Appeals, Cincinnati, Ohio, whose decisions are presently appealed to the Supreme Court of the United States, neither do I have to - and consequently shall not - register any of these firearms, nor do I have to - and consequently shall not - pay any penalty on their manufacture. This last statement stops short of any future monetary benefit I could derive from those occupations, which could be classified as income and taxed as such.

Sincerely yours,

FRANCIS J. WARIN
9720 W. Hollywood
Oak Harbor, Ohio 43449
(419) 897-1147

One copy to the U.S. Department of Justice, Office of the Attorney General, by certified mail.

One copy to the Bureau of Alcohol, Tobacco and Firearms Division, Cincinnati, Ohio, by certified mail.

One copy to Mr. Frederick M. Coleman, U.S. Attorney, Toledo, Ohio, by certified mail.

One copy to Mr. Delbert L. Latta, Ohio Representative, House Office Building, Washington, D.C., by certified mail.

One copy to Mr. Robert Taft, Jr., Ohio Senator, Senate Office Building, Washington, D.C., by certified mail.

One copy to Sheriff Clarence Stephens, of Ottawa County, Ohio, in person.

One copy to Mr. Frank W. Reinheimer, Attorney at law, 208 Madison, Port Clinton, Ohio, in person.

SUPREME COURT, U. S.

No. 73-1073

Supreme Court, U. S.
FILED
FEB 25 1974
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1973

FRANCIS J. WARIN, PETITIONER

v.

DIRECTOR, ALCOHOL, TOBACCO, AND FIREARMS DIVISION, INTERNAL REVENUE SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1073

FRANCIS J. WARIN, PETITIONER

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DIRECTOR, ALCOHOL, TOBACCO, AND FIREARMS DIVISION, INTERNAL REVENUE SERVICE

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MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner brought this action in the United States District Court for the Northern District of Ohio individually and on behalf of "all persons who are not engaged in the business of dealing in arms and ammunition but who are 'keeping and bearing arms' for lawful purposes" (Complaint, p. 1). He requested a declaratory judgment that the Gun Control Act of 1968, Pub. L. 90-618, 82 Stat. 1213, and Title VII of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90-351, 82 Stat. 197, are unconstitutional. He relied upon Article I, Section 8, Clause 1, and Article I, Section 9, Clause 3, of the Constitution and upon the Second, Fourth, Fifth, Thirteenth, and Fourteenth Amendments.

The district court dismissed petitioner's action "since every constitutional challenge he raises against the Acts has already been presented and argued to a federal court in one form or another and held to be unjustified" (Pet. App. 19).[1] The court of appeals affirmed, stating that "the District Court provided ample authority for the denial of each of Appellant's constitutional claims" (Pet. App. 20).

The decision below is plainly correct. Federal regulation of the interstate traffic in firearms is of great importance in federal efforts to prevent violent crime and to assist the States in regulating firearms within their borders, and it falls well within the powers of Congress under the Commerce Clause. See *United States* v. *Biswell,* 406 U.S. 311; *United States* v. *Bass,* 404 U.S. 336; *United States* v. *Freed,* 401 U.S. 601. We rely upon this Court's opinions in those cases, and upon the decisions cited in the opinions below, in urging that further review is unwarranted.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

FEBRUARY 1974.

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[1]The district court also noted that there is a substantial jurisdictional question whether petitioner's action presents a case or controversy (Pet. App. 16). See, *e.g., O'Shea* v. *Littleton,* No. 72-953, decided January 15, 1974.